

Minnesota Housing Finance Agency

RENT-UP ESCROW ACCOUNT AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 20____, between _____, _____ ("Owner"), and Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota ("MHFA").

WITNESSETH:

WHEREAS, Owner is the holder of legal title to certain real property in the State of Minnesota described in **Exhibit A** attached hereto, upon which improvements have been or are to be constructed for a housing development for persons and families of low or moderate income pursuant to contract documents approved by MHFA (the "Development"); and

WHEREAS, Owner has requested that MHFA lend to it the sum of _____ and No/100 Dollars (\$_____) (the "_____ Loan") for the financing of the Development; and

WHEREAS, the _____ Loan is evidenced by that certain Minnesota Housing Finance Agency _____ Mortgage Note (the "_____ Note") made by Owner of even date herewith; and

WHEREAS, the _____ Loan is to be disbursed according to that certain Minnesota Housing Finance Agency _____ Program Building Loan Agreement (the "_____ Building Loan Agreement") between the parties hereto of even date herewith; and

WHEREAS, the parties hereto have also entered into and executed that certain Minnesota Housing Finance Agency _____ Program Regulatory Agreement (the "_____ Regulatory Agreement") of even date herewith and of which this Agreement forms a part; and

WHEREAS, many contingencies can arise during the construction and the initial period subsequent to the acquisition or completion of the Development requiring a ready source of funds.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein set forth and for the purpose of inducing MHFA to enter into the _____ Building Loan Agreement and to make advances of mortgage proceeds thereunder, it is agreed as follows:

Owner agrees at the time of initial closing of the _____ Loan and before commencement of construction on or rehabilitation of the Development either:

A. To deposit with MHFA cash in the amount of _____ and No/100 Dollars (\$_____), constituting an amount equal to three percent (3%) of the initial principal amount of the _____ Loan less the Development Cost Escrow specified in the

_____ Regulatory Agreement, which funds shall be held by MHFA in a "Rent-Up Escrow Account" as provided in the _____ Regulatory Agreement. Said funds shall not be derived from the proceeds of the _____ Loan and shall be held by MHFA from the time of deposit until the date when both of the following shall have occurred: (i) final closing of the _____ Loan, and (ii) sustained ninety-five percent (95%) economic occupancy of the Development for three (3) consecutive months (the "Terminal Date"), unless sooner disbursed as herein provided, at which time the funds shall be returned to Owner. The funds shall be invested and reinvested by MHFA and the proceeds thereof added to such account, and the funds may be applied by MHFA, in its sole discretion, to the payment of the current and delinquent "Operating Expenses" (as defined in the _____ Regulatory Agreement) of the Development, to maintain the "Replacement Cost Reserves" (as defined in the _____ Regulatory Agreement), to pay delinquent principal and interest and Annual Fee, if applicable, payments required to be paid to MHFA under the _____ Note, or otherwise to cure any breaches of the obligations of Owner under the _____ Building Loan Agreement, the _____ Regulatory Agreement, or any other agreement between Owner and MHFA. Owner shall have forty-eight (48) hours to cure any default after written notice prior to disbursement by MHFA from this fund; or

B. To deliver to MHFA an unconditional and irrevocable letter of credit (the "Letter of Credit"), in a form and from a financial institution acceptable to MHFA, in favor of MHFA in the amount of _____ and No/100 Dollars (\$_____), constituting an amount equal to three percent (3%) of the initial principal amount of the _____ Loan less the Development Cost Escrow specified in the _____ Regulatory Agreement. MHFA may, in its sole discretion, draw against the Letter of Credit and receive funds up to the total amount thereof, as set forth above, for the payment of the current and delinquent "Operating Expenses" (as defined in the _____ Regulatory Agreement) of the Development, to maintain the "Replacement Cost Reserves" (as defined in the _____ Regulatory Agreement), to pay delinquent payments required to be paid to MHFA under the _____ Note, or otherwise to cure any breaches of the obligations of Owner under the _____ Building Loan Agreement, the _____ Regulatory Agreement, or any other agreement between Owner and MHFA. Owner shall have forty-eight (48) hours to cure any default after written notice prior to MHFA's application for funds to the financial institution. The Letter of Credit shall be effective on the date of initial closing of the _____ Loan and shall expire on the Terminal Date. If Owner is unable to obtain a Letter of Credit for said period of time, MHFA will consent to the delivery by Owner of successive unconditional and irrevocable Letters of Credit, each of which must have a term of not less than one (1) year, to be in force and effect without interruption through and including the Terminal Date. Each individual Letter of Credit must be in a form and from a

financial institution acceptable to MHFA, in its sole discretion, and the first of the Letters of Credit must be in the amount set forth above and delivered at the initial closing of the _____ Loan, and each succeeding Letter of Credit must be in the amount set forth above. In addition, Owner unconditionally consents to MHFA's right and privilege, in its sole discretion, and without notice to Owner, to draw and receive funds up to the full amount of each Letter of Credit at any time during the last three (3) business days for which each Letter of Credit is effective, unless, prior to three (3) business day period, Owner shall deliver to MHFA a renewal of Letter of Credit for an additional period of not less than one (1) year, or unless the Terminal Date shall occur during the effective term of the then-outstanding Letter of Credit. It is the intent of this Agreement that if Owner delivers successive Letters of Credit as provided herein, MHFA shall at all times prior to the Terminal Date have in its possession an unexpired Letter of Credit, subject to the provisions for drawing thereon by MHFA and renewal by Owner as set forth above, in the amount set forth above.

If MHFA draws the balance of any Letter of Credit as a result of Owner's failure to renew Letter of Credit in accordance with the terms for renewal set forth above, MHFA shall hold the funds in the "Rent-Up Escrow Account" established in the _____ Regulatory Agreement. MHFA shall invest and reinvest the funds for the benefit of the account and apply the funds in accordance with the terms of this Agreement. If MHFA does not disburse the funds, MHFA shall return them to Owner, together with accrued interest, on the Terminal Date.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the parties hereto entered into and executed this Agreement on the day and year first above written.

OWNER:

a _____

By: _____

Its: _____

MHFA:

MINNESOTA HOUSING FINANCE AGENCY

By: _____
Robert L. Odman, Assistant Commissioner,
Multifamily

This document was prepared by:
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EXHIBIT A
LEGAL DESCRIPTION